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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,439	09/23/2003	Gaetan Martel	4223-53us PAN/df	3278

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EXAMINER

AHMAD, NASSER

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/667,439	Applicant(s) MARTEL, GAETAN	
	Examiner Nasser Ahmad	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2005.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 17-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-12 and 17-19 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on December 16, 2005 has been entered.

Rejections Withdrawn

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Tucker (5045374) made in the last Office Action mailed on September 8, 2005 has been withdrawn in view of the amendment filed on December 16, 2005.

3. Claims 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Zellinger (4837997) made in the last Office Action has been withdrawn in view of the amendment.

Response to Arguments

4. Applicant's arguments with respect to claims 1-12 and 17-19 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Tucker (5045374).

Tucker relates to a caulking joint device in combination with a caulking joint (abstract).

The device (10) comprising an elongated central strip (14), first and second flaps (16 and 18) connected to a longitudinal edge of the central strip. The device is not completely rigid and not completely flexible (col. 4, lines 20-23). Figure-3 shows that the edges of the flaps are tapered and the hinges (52 and 50) are flexible. The flaps can be more flexible (when the flaps are tapered) compared to the central strip or less flexible (when the flaps are not tapered). Figure-1 shows a side of the central strip with a concave transversely and the flaps are provided with adhesive strips covered with release liners (col. 5, lines 58-65).

Regarding the intended use phrases such as “for concealing”, “adherable”, when the first flap ...second surface”, “being pivotable”, etc. have not been given any patentable weight because said phrases are not found to be of positive limitation as said phrases only require the ability to so perform.

7. Claims 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Zellinger (4837997).

Zellinger relates to a kit for concealing a pair of intersecting joints between adjacent surfaces (figure-10) and comprises a device and a cutting template. The device (20) comprises an elongated body adapted to have parts of a first side of the body is adhesively (36) connected to surfaces defining a joint in a watertight manner such that a central strip of the body encloses the joint. The device being adapted to be transversely cut into segments in order to conform with lengths of the joint. The cutting template (62) provides for shaping ends of a pair of segments (20 and 22) of the device in order to obtain complementary ends between the pair of segments meeting at a pair of intersecting joints so as to conceal the pair of intersecting joints. See figure-2.

The intended use phrases such as "connectable", "cuttable", etc. are not found to of positive limitation as said phrases only requires the ability to so perform.

Response to Arguments

8. Applicant's arguments filed December 16, 2005 have been fully considered but they are not persuasive.

Applicant argues that tucker's strip is not flexible. This is not found to be convincing because, as acknowledged by the applicant in page-6 of the response that, the strips are not extremely rigid like metal. Therefore, the strip is flexible.

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In response to applicant's position that there is no indication in /tucker that the flanges are adherable in a water tight manner. This is not deemed to be persuasive because the phrase "are adherable" is not found to be pf positive limitations as it only require the ability to so perform in the future. Further, Tucker teaches that the strip is adhered to a drywall joint and it is well known in the construction are that such joint are of water tight manner because, for example, when the joint is part of a bathroom wall, the joints are to be water tight for preventing water to leak therethrough.

Contrary to applicant's assertion that the Tucker's joint is not a caulking joint, applicant is informed that it is well known and conventional in the art to provide caulking joint between dry wall surface joints.

As for the cutting template in claim 17, applicant argues that the corner piece of Zellinger is not a template. This is not found to be convincing because Zellinger teaches that the corner piece is provided to cover the corner joint. The sealing strips meet at the corner and is covered by the corner piece. It is the examiner's position that the corner piece also functions as a template because is provides for the sealing strip to be trimmed or cut into a shape that is adaptable to form a corner joint. Also, the corner piece will provide guiding edges to define a shape for the edges of the strip as it requires the strip to have a certain edge shape for adapting to form a corner joint. Thus, in the absence of any evidence to the contrary, it remains the examiner's position that the claimed invention is anticipated by the prior art of record as discussed above.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nasser Ahmad whose telephone number is 571-272-1487. The examiner can normally be reached on 7:30 AM to 5:00 PM, and on alternate Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nasser Ahmad 12/27/05
Primary Examiner
Art Unit 1772

N. Ahmad.
December 27, 2005.